In the High Court of Punjab and Haryana, Chandigarh.

I.T.R. No.21 of 1989

Date of Decision: 25.3.2007

Commissioner of Income-tax (Central), Ludhiana.

…Petitioner.

Versus

M/s Avon Cycles (P) Limited, Ludhiana.

…Respondents.

CORAM: HON'BLE MR.JUSTICE M.M.KUMAR
HON'BLE MR.JUSTICE RAJESH BINDAL

Present: Mr.Sanjiv Bansal , Advocate
for the applicant-revenue.

Mr.Akshay Bhan, Advocate
for the respondent-assessee.

JUDGMENT

M.M.KUMAR, J. (ORAL)

On the basis of an application filed by the revenue under Section 256(1) of the Income-tax Act, 1961, the revenue had requested the Tribunal to make a reference to this Court for its opinion on two questions of law which were claimed to have arisen from the order of the Income-tax Tribunal dated 1.11.1987 passed in I.T.A. No.1196/CHANDI/86 in respect of the assessee-respondent for the assessment year 1983-84. The questions which have been claimed are as under:-

"1. Whether on the facts and in the circumstances of the case, the Appellate Tribunal was right in law in allowing

the assessee's claim for Rs.22,60,375/- on account of undisclosed liability towards ST/CST and Education-tax in assessment year 1983-84?

2. Whether on the facts and in the circumstances of the case, and on a proper interpretation of Explanation 2 to Section 80J(4), the Appellate Tribunal was right in law in holding that second-hand machinery worth Rs.1,08,568/- should be taken as part of the capital employed for allowing the assessee's claim for deduction u/s 80J?"

It remains undisputed that the controversy raised by the first question is covered against the revenue in view of the Division Bench judgment of this Court in the case of **"Sirsa Industries v. Commissioner of Income-tax" (1989)178 I.T.R. 437** laying down that wherever an assessee follows the mercantile system of accounting, then deduction could be claimed only in the year in which the liability is finalised or the amount is actually paid. Accordingly, the question has to be answered against the revenue.

On the second question, the Tribunal has allowed deduction under Section 80J on the second-hand machinery worth Rs.1,08,568/- by treating the same as part of the capital employed on the reasoning that in the present case, the second-hand machinery was purchased from a third person and it was not brought in as an asset by mere transfer. The Tribunal has placed reliance on the view taken by the Andhra Pradesh High Court in the case of **"Electronic Corporation of India v. C.I.T." (1985) 151 I.T.R. 381** holding that the only amount ineligible for deduction under Section 80J is where the old machinery has been transferred by the assessee from his earlier business but where the machinery was purchased from a third person and

was not brought in as an asset by mere transfer from one undertaking to another by the same assessee then the deduction under Section 80J was allowable even on the second-hand machinery. Raising the issue of interpretation of provisions of Explanation 2 to Section 80J, the Tribunal in para 8 has observed as under:

> "8. Coming to the last dispute, the matter in dispute is squarely covered by the decision of the Andhra Pradesh High Court in the case of Electronic Corporation of India (supra). There being no contrary decision of any other High Court and the question being one of pure interpretation of the provision of the Explanation II to Section 80J, we are not inclined to interfere with the decision of the CIT(A) taken in this behalf".

A Division Bench of the Andhra Pradesh High Court in **Electronic Corporation of India's case** (supra) has placed reliance on various Division Bench judgments of Calcutta and Bombay High Courts namely **"C.I.T. v. Indian Oxygen Limited" (1978)113 I.T.R. 109, C.I.T., Gujarat v. Satellite Engineering Limited (1978) 113 I.T.R. 208, "C.I.T. Gujarat-iv V. Swiss Textile Bearing Limited" (1982) 135 I.T.R. 443 and "C.I.T. v. Guru Investment Private Limited" (1979) 117 I.T.R. 522**.

We have heard learned counsel for the parties at length and with their able assistance have perused the record.

It would be appropriate to make a reference to Section 80J of the Act, as it stood on the relevant day and the relevant extract thereof reads as under:-

> "**80J(1)** Where the gross total income of an assessee includes any profits and gains derived from an industrial undertaking or a ship or the business of a hotel, to which this sectino applies, there

shall, in accordance with and subject to the provisions of this sectin, be allowed, in computing the total income of the assessee, a deductin from such profits and gains reduced by the deduction, if any, admissible to the assessee under section 80HH [or section 80HHHA] of so much of the amount thereof as does not exceed the amount calculated at the rate of six per cent per annum on the capital employed in the industrial undertaking or ship or buisness of the hotel, as the case may be, [computed in the manner specified in sub-sectioin(1A)] in respect of the previous year relevant to the assessment year (the amount calculated as aforesaid being hereafter, in this section, referred to as the relevant amount of capital employed during the previous year):

Provided that in relation to the profits and gains derived by an assessee, being a company, from an industrial undertaking which begins to manufacture or produce articles or to operate its cold storage plant or plants after the 31st day of March, 1976, or from a ship which is fist brought into use after that date, or from the business of a hotel which starts functioning, after that date, the provisions of this sub-section shall have effect as if for the words "six per cent", the words "seven and a half per cent" had been substituted.]

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(II) The aggregate of the amounts representing the values of the assets as on the first day of the computation period of the undertaking or of the business of the hotel to which this section applies shall first be ascertained in the following manner:-

(i) In the case of assets entitled to depreciation, their written down value;

(ii) in the case of assets acquired by purchase and not entitled to depriciation, their actual cost to the assessee;

(iii) in the case of assets acquired otherwise than by purchase and not entitled to depreciation, the value of the assets when they became assets of the business;

(iv) in the case of assets, being debts due to the person carrying on the business, the normal amount of those debts;

(v) in the case of assets, being cash in hand or bank, the amount thereof.

Explanation 1: In this clause, "actual cost" has the same meaning as in clause (*1*) of section 43.

Explanation 2: In this clause and in caluse *(*III*),* "computation period" means the period for which profits and gains of the industrial undertaking or business of the hotel are computed under sections 28 to 43A.

Explanation 3: In this clause and in clause (*V*), "wirtten down value" has the same meaning as in clause (*6*) of Section 43.

Explanation 4: Where the cost of any asset has been satisfied otherwise than in cash the then value of the consideration actually given for the asset shall be treated as the actual cost of the asset.

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A perusal of the aforementioned Section reveals that deductions have been allowed in respect of profits and gains from newly established undertakings along with others. The object of the provision made in the year 1968 appears to be to encourage the industrialisation in the Country by extending them various incentives. Section 80J(ii) of the Act would reveal that aggregate amount representing the value of the assets as on the first day of the computation period of undertaking is to be ascertained. In case of assets acquired by purchase which are not entitled to depriciation by computing their actual cost to the assessee. In the present case, the assessee had purchased second hand machinery from a third person and he had not brought the same either from his own undertaking where the machinery was being used or from any sister concern. In such a situation, the case of the assessee would be covered by Section 80J(II)(ii) of the Act. Even otherwise this interpretation has been supported by the view taken by a Division Bench of the Andhra Pradesh High Court in the case of **Electronic Corporation of India** (supra) in which various judgments of other Courts have been followed and applied. No judgment taking a contrary view has been cited by learned counsel for the revenue. Therefore, there is no escape from the conclusion that the question deserves to be answered against the revenue. Accordingly, the question is answered against the revenue.

The reference is disposed of accordingly.

(M.M.KUMAR)
Judge

(RAJESH BINDAL)
Judge

dkb

"C.I.T. v. Indian Oxygen Limited" (1978)113 I.T.R. 109,

C.I.T., Gujarat v. Satellite Engineering Limited (1978) 113 I.T.R. 208,

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